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JUN 18 2021

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

STATE ELECTIONS  
ENFORCEMENT COMMISSION

In the Matter of a Complaint by Brian P. Boyd,  
Madison

File No. 2020-077A

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement by and between Craig Rogoff, Town of East Haddam, State of Connecticut, hereinafter referred to as "Respondent," and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Complainant alleged that he was improperly "ejected" from the Deep River Elementary School polling place at the November 3, 2020 election in violation of the provision of in General Statutes § 9-236 that allows for the news media to remain within a polling place during an election.
2. At all times relevant to this complaint, Complainant was Editor of Shoreline Publications, Inc. Complainant also alleged violations of § 9-308 and § 9-309, as a result of being ejected from the polling place "without cause."
3. At all times relevant to this complaint, Respondent was the Moderator at the Deep River Elementary School polling place in the Town of Madison and Dale Winchell was Deep River Registrar of Voters during the November 3, 2020 election.
4. Further, allegations pertaining to violations of General Statutes § 9-308 and § 9-309 were not supported by the facts or law after investigation; and therefore the Commission dismisses these allegations.
5. This agreement is between Respondent and the Commission. Any resolution regarding additional Respondents are treated in a separate disposition.
6. The November 3, 2020 was the first election held during the Covid 19 pandemic.
7. Complainant alleged:  
*On Nov. 3, I, Brian Boyd, a clearly identified member of the press, was ejected from a polling place by Deep River Republican Registrar of Voters Dale Winchell and [Respondent] without cause in violation of CGS 9-236, 9-308 ... and 9-309. On Nov. 3, I arrived at the Deep River polling place, the Deep River Elementary School gymnasium, at about 7:45 p.m. and remained*

*after identifying myself to multiple poll workers, including [Respondent], as a member of the press awaiting election returns.*

*... At approximately 8:10 p.m., Registrar of Voters Winchell approached Constable Reid, stating he'd heard a report from First Selectman Angus McDonald (who was waiting outside after being asked to leave the premises at 8 p.m.) that "a guy in a red jacket" was in the building. Realizing that the red-jacketed guy was me, Winchell asked why I was there. I again identified myself as a member of the press. Winchell demanded that I leave; ... I again informed him that I was there as a member of the press and that he had no cause or standing to remove me and suggested he contact the moderator for guidance, which he did.*

*I remained in the hallway with Constable Reid until ... [Respondent] entered the discussion at approximately 8:15 p.m.; the conversation was a repeat of the conversation with Mr. Winchell. [Respondent] insisted I leave. ... I joined the five or so residents waiting outside and at 8:22p.m. emailed Gabe Rosenberg at the Secretary of the State's Office; I received a response that noted Winchell and Rogoff's actions were contrary the aforementioned state statutes at 8:24 p.m. and was able to gain re-entry about 10 minutes later.*

*[Respondent], when shown the email, said 'Oh, I was wrong. You can come in.' Winchell noted the pandemic and said, 'My first priority is the safety of my poll workers,' ... I was able to remain on site until votes were announced and left at approximately 9 p.m.*

8. General Statutes § 9-236, provides in pertinent part:

...  
(c) No person shall be allowed within any polling place for any purpose other than casting his or her vote, except (1) those permitted or exempt under this section or section 9-236a, (2) primary officials under section 9-436, (3) election officials under section 9-258, including (A) a municipal clerk or registrar of voters, who is a candidate for the same office, performing his or her official duties, and (B) a deputy registrar of voters, who is a candidate for the office of registrar of voters, performing his or her official duties, or (4) party checkers under section 9-235. ***Representatives of the news media shall be allowed to enter, remain within***



***and leave any polling place or restricted area surrounding any polling place to observe the election, provided any such representative who in any way interferes with the orderly process of voting shall be evicted by the moderator. .... [Emphasis added.]***

9. By way of background, there is no claim or indication that Complainant as a member of the media interfered with the “orderly process of voting” at the November 3, 2020 election. *See* General Statutes § 9-236.
10. Because the election occurred during the Covid 19 pandemic the office of the Secretary of the State (“SOTS”) prior to the November 3, 2020 election issued a *2020 Connecticut Safe Polls Plan Handbook* (hereinafter “Handbook”), revised as of October 16, 2020.
11. The Handbook delineated details regarding the disinfection of polling places for the November 3, 2020 election and includes details as to how wipes, sprays and chemicals can be used based on whether they are to be applied to surfaces, ballots or IVS machines, among other components of a polling place. The handbook incorporated US Center for Disease Control (“CDC”) guidelines regarding disinfection and Covid 19 and, as detailed herein, the SOTS deferred to individual municipalities and polling places on how such cleaning of the polling places on election day would be implemented.

General Statutes § 9-236 (c) and Representatives of the News Media

12. While the Commission has limited precedent in applying General Statutes § 9-236 pertaining to representatives of the news media, it has as early as 1995 determined that Registrars of Voters are required to allow the presence of the news media in a polling place. *See In the Matter of a Complaint by S. Vigneri*, Windham, File 95-217 (Where the Commission ordered Windham Registrars of Voters and moderators, who denied access to the media to monitor a referendum from within a polling place, to henceforth comply with § 9-236) (1995).
13. Further, *In a Matter of the Complaint by Thomas Appleby*, New Fairfield, File No. 2007-414, a television cameraman was asked to leave as he attempted to film a mayoral candidate casting his ballot. While the cameraman was removed by the moderator and instructed by the Registrars of Voters by phone to leave the polling place, he was ultimately allowed back in the polling place. In File No. 2007-414 the Respondent Moderator was ordered to henceforth strictly comply with General Statutes § 9-236.

14. The Commission has emphasized that General Statutes § 9-236 (c), "...is treated as a strict liability statute" and applied to any location in which a voting tabulator is located. *See In the Matter of a Referral by Nancy Ahern*, New Haven, File No. 2018-011B.
15. After investigation, it was determined that Complainant was asked to leave by Registrar of Voters Winchell and Respondent, which was contrary to the provisions in General Statutes § 9-236 that permit the presence of the news media in the polls to observe the process during an election.
16. Ultimately, because of advice from the SOTS, this situation was remedied and Complainant was readmitted to the polling place as a member of the media. Complainant was excluded from the polls for approximately ten minutes in total.
17. Nevertheless, the Commission concludes that Respondent violated § 9-236 by causing the removal of the media from a polling place at the November 3, 2020 election in Deep River.
18. As enumerated in § 9-7b-48 of the Regulations of Connecticut State Agencies:  
In its determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:
  - (1) the gravity of the act or omission;
  - (2) the amount necessary to insure immediate and continued compliance;
  - (3) the previous history of similar acts or omissions; and
  - (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.
19. Consistent with mitigating or aggravating circumstances, as enumerated in § 9-7b-48, R.C.G.A, the Commission believes that civil penalties often time act as an effective deterrent and connotes the seriousness with which the Commission views any violations of elections laws pertaining to the administration of free and fair elections.
20. The Commission, as in this instance, views the transparency of the election day process of voting and the appropriate conduct of polling place officials throughout the election as crucial to public perception and trust that their votes will be fairly registered and tallied. Finally, the Commission recognizes the role that media presence at the polls during an election provides in assuring the fairness of the process and the reassuring public confidence in the same.



21. Additionally, the Commission remains cognizant of the exceptional and unique conditions necessitated by the Covid 19 pandemic pertaining to the operation of polling places and the administration of the November 3, 2020 election. The Commission respects that the Respondent and polling place officials rigorously worked to follow and apply CDC and SOTS Covid 19 safety guidelines for the protections of electors, elections officials and all individuals within the polling place during the election.
22. Therefore, under these narrow, specific, and truly unique circumstances the Commission declines to seek a civil penalty against Respondent for his violation of General Statutes § 9-236, based on its fact and case specific analysis.
23. The Respondent admits all jurisdictional facts and concurs that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
24. The Respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
25. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by either of the parties in any subsequent hearing, if the same becomes necessary.

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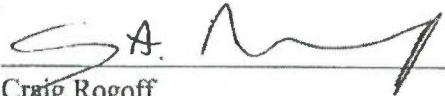
ORDER

IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with General Statutes § 9-236.

The Respondent

For the State of Connecticut

By:



Craig Rogoff  
65 Falls Bashan Road  
Moodus (East Haddam), Connecticut

Dated: 6/17/2021

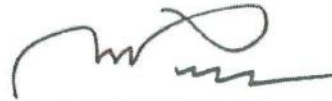
By:



Michael J. Brandt, Esq.  
Executive Director and General Counsel  
And Authorized Representative of the  
State Elections Enforcement Commission  
20 Trinity Street, Suite 101  
Hartford, Connecticut

Dated: 6/21/2021

Adopted this 7<sup>th</sup> day of July, 2021 at Hartford, Connecticut by vote of the Commission.



Stephen T. Penny, Chairman  
By Order of the Commission